

The use of police cautions and youth justice conferences in NSW in 2010

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Aim: To assess whether the philosophy of the Young Offenders Act (YOA) is being adhered to in respect to the nature of offences being diverted and the use of the hierarchical approach to sanctioning.

Method: The aim will be addressed by describing the use of police cautions, youth justice conferences (YJCs) and proven Children's Court appearances among a cohort of young people in NSW in 2010. The data were drawn from the NSW Re-offending Database (ROD).

Results: Overall, the results were in the expected direction when the hierarchy of sanctions under the YOA are considered (i.e. from police caution to YJC to proven court appearance). Very few young people in this cohort received more than three police cautions and/or YJCs. Additionally, no young person was given a YJC for homicide related offences that are excluded under the Young Offenders Act 1997 (YOA). Juvenile offenders, however, were much more likely to receive a caution or be referred to court than to be referred to a Youth Justice Conference.

Conclusion: The philosophy of the Act has largely been adhered to, at least insofar as the gradation of sanctions and the types of offences being diverted are concerned.

Keywords: police caution, Youth Justice Conference, Young Offenders Act 1997, juvenile

Introduction

Research conducted in the 1980's and 1990's identified a number of barriers to diversion in New South Wales (NSW), including a lack of formal procedures, an increase in follow-up work for police associated with diversion, and the absence of any proper review of diversionary decisions within the criminal justice system (Bargen, Clancey and Chan, 2005). The presence of such barriers meant diversionary options while available, were not well utilised. The NSW *Young Offenders Act 1997* (YOA) was introduced to formalise procedures and guidelines for interventions designed to divert young offenders from the court system using a hierarchy of warnings,¹ police cautions and youth justice conferences (YJC). The YOA aimed to address the identified barriers to diversion by formally guiding police discretion and appointing Specialist Youth Officers within the NSW police force.

The YOA applies to young people in NSW aged between 10 and 17 years at the time of the offence. A number of offences are excluded from the Act and must result in a court appearance.

These include most sexual offences, offences that result in the death of any person, serious drug offences and traffic offences (if the offender is old enough to hold a driver's licence). Whether the offence can be dealt with through the YOA is only one determining factor in selecting the appropriate level of intervention. A number of other factors influence the decision, including the age of the young person at the time of the offence, the seriousness of the offence (taking into account the harm to the victim and the level of violence involved), prior offending history, and whether the young person makes an admission of guilt (Clancey, Doran and Maloney, 2005). If an admission of guilt is not made, offences cannot be processed by way of a police caution or a YJC. The legislation specifies a limit of three police cautions per individual. No such limits are prescribed for YJCs. It is, however, generally understood that a young person would not be offered multiple YJCs if they continued to re-offend (Clancey, Doran and Maloney, 2005).

Despite the fact that there is a great deal of public interest in the YOA, little is known regarding the proportion of young people receiving multiple police cautions and YJCs.

The aim of this brief is to assess whether the philosophy of the YOA has been adhered to in respect to the nature of offences being diverted and the use of the hierarchical approach to sanctioning through police cautions, YJC, and Children's Court appearances.

The aim will be addressed in two ways:

- a) By describing the offences for which young people are diverted; and
- b) By exploring the use of police cautions, youth justice conferences and proven Children's Court appearances among a cohort of young people.

Method

Study sample

The study utilised data from the NSW Re-Offending Database (ROD) which contains information on each person who has been dealt with in the NSW criminal justice system since 1994 (for Children's Court and since 1998 for police cautions and YJCs; Hua & Fitzgerald, 2006). The study cohort consisted of young people who admitted an offence in 2010 and who received a police caution or a YJC for the offence, or who had a proven appearance in a Children's Court ("proven" is defined as guilty by verdict or plea). If an individual had more than one contact in 2010, then the index contact was chosen at random. The dataset contained records for 13,980 young people of whom 8,558 (61.2%) had an index police caution, 960 (6.9%) had an index YJC and 4,462 (31.9%) had an index proven court appearance.

Variables

Index contact: Whether the young person had an index contact of a police caution, YJC or proven court appearance.

Number of proven offences at index contact: Number of proven offences at the offenders index contact.

Index offence type: The principal offence category of the offender's index offence. An offender's principal offence was defined using two-digit codes from the Australian and New Zealand Standard Offence Classification (ANZSOC) (Australian Bureau of Statistics, 2011).

Number of prior contacts: For each young person, the number of police cautions, YJCs or proven court appearances since 1994.

Age: Age, in years, of the individual at the time of the index contact. The sample was restricted to those aged 11 to 18 years old at the time of the index contact. A small proportion of the sample was excluded, namely, those aged less than 11 years old (n=44; 0.3%) and those aged greater than 18 years old (n=374; 2.7%).

Sex: Sex of the young person. A small proportion of the sample (n=41; 0.3%) were excluded because sex was recorded as "unknown".

Indigenous status: Whether, at the time of the index contact, the young person identified as being of Aboriginal or Torres Strait Islander descent. Indigenous status was unknown in 3.3 per cent of cases (n=444) and these cases were combined with the non-Indigenous group because their outcomes tended to more closely resemble non-Indigenous offenders.

Analysis

Descriptive analyses were carried out to determine the characteristics of the sample, and detail the number of prior contacts for each individual under the YOA. Chi-square tests of association (for dichotomous variables) and one-way analysis of variance (ANOVA) tests of mean difference² (for continuous variables, with Tukey post-hoc test) were carried out to determine if offender characteristics were associated with the index contact (either police caution, YJC or proven court appearance).

Results

Characteristics of the sample

Table 1 shows the sample characteristics for each group, either an index police caution, index YJC or index proven court appearance. A smaller proportion of those with an index police caution were male (67.9%), compared to the other two groups (78.3% for YJC; 79.9% for court; $p < .001$). Those with an index proven court appearance were older (mean=16.1 years) than the other two groups (mean=15.2 years for police caution; mean=15.8 years for YJC; $p < .001$). A significantly smaller proportion of young people in the police caution group identified as Indigenous, compared to the other two groups ($p < .001$). The mean number of proven concurrent offences was highest among those with an index proven court appearance, followed by those with an index YJC, and lowest among those with an index police caution (mean=2.5 for court; mean=2.1 for YJC; mean=1.3 for police caution; $p < .001$).

Table 2 shows the breakdown of principal offence by index contact using two-digit ANZSOC codes (Australian Bureau of Statistics, 2011). For individuals with an index police caution, theft related offences comprised the largest proportion (35.3%), followed by property damage (15.7%), and acts intended to cause injury (14.8%). For individuals with an index YJC, acts intended to cause injury comprised the largest proportion (27.6%), followed by theft related offences (22.5%), and property damage (18.2%). For individuals with an index proven court appearance, acts intended to cause injury comprised the largest proportion (24.6%), followed by theft related offences (13.3%), and offences against justice procedures (11.7%). No young person was given a police caution or a YJC for homicide related offences, which are excluded under the YOA. In addition, a small proportion of young people received a police caution or a YJC for offences which contain some exclusion criteria under YOA (taken together, 0.3% for sexual assault related offences, 9.9% for illicit drug offences, and 3.6% for traffic and vehicle regulatory offences). The young people who were diverted for these offences were not necessarily ineligible because some sexual, drug and traffic offences are eligible for diversion under the act (see s.8 for list of eligible offences).

Prior contacts with the Criminal Justice System

Table 3 shows the number of prior police cautions, YJCs and proven court appearances by index contact type.

Table 1. Characteristics of the cohort (n=13,562) by index contact

Offender characteristics		Index contact					
		Police caution (n=8,422)		YJC (n=945)		Proven court appearance (n=4,195)	
		N	%	N	%	N	%
Sex ^a	Male	5,622	67.9	740	78.3	3,350	79.9
	Female	2,663	32.1	205	21.7	845	20.1
		p<.001^d					
Age at index contact (years) ^b	11	135	1.6	7	0.7	10	0.2
	12	344	4.1	17	1.8	40	1
	13	781	9.4	53	5.6	121	2.9
	14	1,401	16.8	106	11.2	373	8.9
	15	1,842	22.1	195	20.6	713	17
	16	1,844	22.1	225	23.8	1,049	25
	17	1,701	20.4	248	26.2	1,197	28.5
	18	278	3.3	94	9.9	690	16.5
		Mean (SD)	15.2 (1.6)		15.8 (1.5)		16.1 (1.4)
		p<.001^e					
Indigenous status ^c	Indigenous	1,491	17.9	234	24.8	1,547	36.9
	Non-Indigenous or unknown	6,835	82.1	711	75.2	2,648	63.1
		p<.001^d					
Number of proven offences at index contact	1	6,867	81.5	517	54.7	1,921	45.8
	2	1,062	12.6	210	22.2	951	22.7
	3	329	3.9	88	9.3	496	11.8
	4+	164	1.9	130	13.8	827	19.7
		Mean (SD)	1.3 (0.8)		2.1 (2.6)		2.5 (3.1)
		p<.001^e					

^a Sex was missing/unknown for 137 records in the police caution cohort.

^b Age was missing for 96 records in the police caution cohort and 2 records in the court cohort.

^c Indigenous status was missing for 96 records in the police caution cohort.

^d p-value for chi-square test of association between offender characteristic and index contact.

^e p-value for one-way ANOVA test of mean difference between offender characteristic and index contact.

Bold indicates a significant association at the .05 level of significance.

Table 2. Principal offence (using ANZSOC 2008 categories) by index contact (n=13,558)

	Police caution (n=8,418) ^a		Index YJC (n=945)		Index proven court appearance (n=4,195)	
	N	%	N	%	N	%
01. Homicide and related offences	0	0	0	0	2	0.05
02. Acts intended to cause injury	1,243	14.8	261	27.6	1,033	24.6
03. Sexual assault and related offences	17	0.2	1	0.1	33	0.8
04. Dangerous or negligent acts endangering persons	21	0.2	4	0.4	66	1.6
05. Abduction, harassment and other offences against the person	63	0.7	12	1.3	45	1.1
06. Robbery, extortion and related offences	0	0	7	0.7	331	7.9
07. Unlawful entry with intent/burglary, break and enter	533	6.3	109	11.5	472	11.3
08. Theft and related offences	2,970	35.3	213	22.5	560	13.3
09. Fraud, deception and related offences	155	1.8	11	1.2	23	0.5
10. Illicit drug offences	694	8.2	16	1.7	147	3.5
11. Prohibited and regulated weapons and explosives offences	90	1.1	6	0.6	15	0.4
12. Property damage and environmental pollution	1,318	15.7	172	18.2	266	6.3
13. Public order offences	938	11.1	89	9.4	472	11.3
14. Traffic and vehicle regulatory offences	203	2.4	11	1.2	226	5.4
15. Offences against justice procedures, government security and government operations	118	1.4	27	2.9	491	11.7
16. Miscellaneous offences	55	0.7	6	0.6	13	0.3

^a ANZSOC code was missing for 4 records in the police caution cohort.

These data are also presented graphically — prior police cautions (Figure 1), prior YJCs (Figure 2) and prior proven court appearances (Figure 3). Taken together, the most noteworthy results are:

- Prior police cautions were significantly more likely among those with an index YJC or index proven court appearance, compared to those with an index police caution. Young people with an index proven court appearance were significantly more likely to have had a prior police caution, compared to those with an index YJC.
- Prior YJCs were significantly more likely among those with an index contact as a proven court appearance,

compared to an index police caution or index YJC. Young people with an index YJC were significantly more likely to have had a prior YJC, compared to those with an index police caution.

- Prior proven court appearances were significantly more likely among those with an index contact as a proven court appearance, compared to an index police caution or index YJC. Young people with an index YJC were significantly more likely to have had a prior proven court appearance, compared to those with an index police caution.

Table 3. Number of prior caution, YJC or proven court appearance/s by index contact (n=13,562)

Prior contacts		Index contact					
		Police caution (n=8,422)		YJC (n=945)		Proven court appearance(n=4,195)	
		N	%	N	%	N	%
Number of prior cautions	0	6,602	78.4	430	45.5	1,507	35.9
	1	1,409	16.7	225	23.8	1,108	26.4
	2	375	4.5	152	16.1	876	20.9
	3+	36	0.4	138	14.6	704	16.7
	Mean (SD)	0.3 (0.6)		1.0 (1.1)		1.2 (1.2)	
						caution vs YJC p<.001^a caution vs court p<.001 YJC vs court p<.001	
Number of prior YJCs	0	8,260	98.1	811	85.8	3,339	79.6
	1	143	1.7	106	11.2	667	15.9
	2	17	0.2	24	2.5	136	3.2
	3+	2	0.0	4	0.4	53	1.3
	Mean (SD)	0.0 (0.2)		0.2 (0.5)		0.3 (0.6)	
						caution vs YJC p<.001^a caution vs court p<.001 YJC vs court p<.001	
Number of prior proven court appearances	0	8,023	95.3	717	75.9	2,090	49.8
	1	310	3.7	138	14.6	803	19.1
	2	48	0.6	46	4.9	484	11.5
	3+	41	0.4	44	4.7	818	19.5
	Mean (SD)	0.1 (0.4)		0.4 (0.9)		1.3 (2.0)	
						caution vs YJC p<.001^a caution vs court p<.001 YJC vs court p<.001	

^a p-value for one-way ANOVA test of mean difference (Tukey post-hoc test) between offender characteristic and index contact. Bold indicates a significant association at the .05 level of significance.

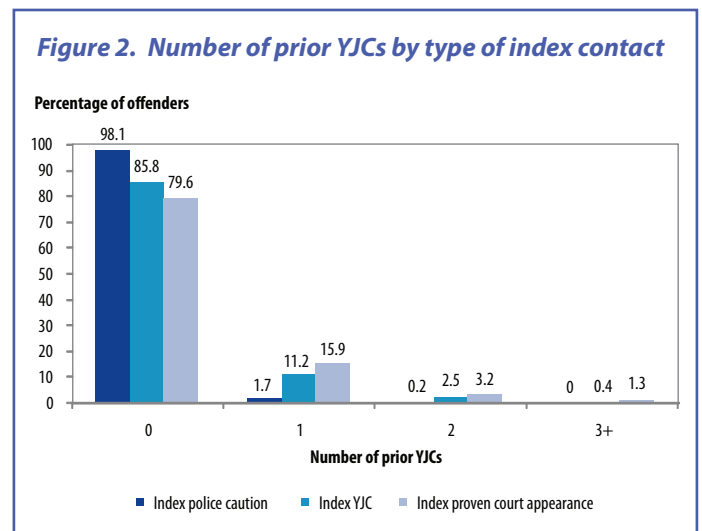
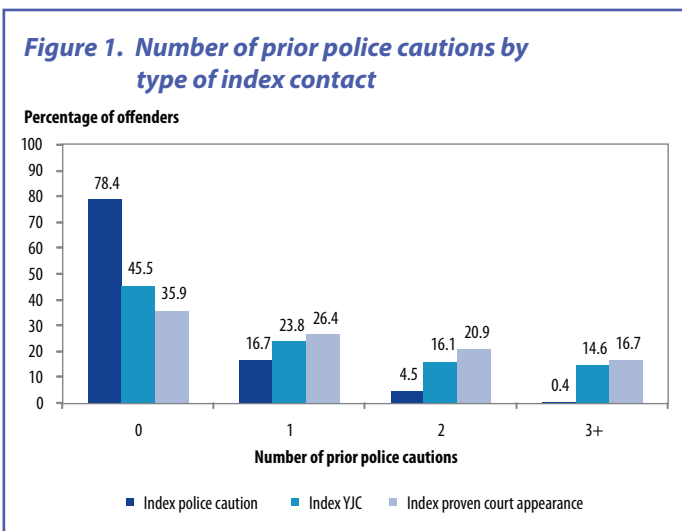


Figure 3. Number of prior proven court appearances by type of index contact

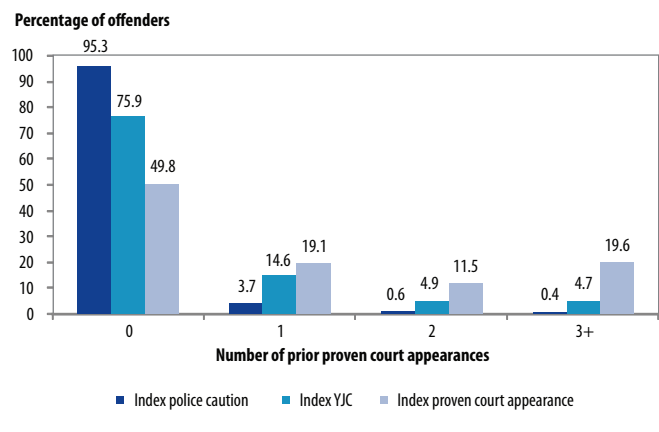


Table 4 assesses whether the likelihood of receiving a police caution, YJC or court appearance varies according to the number of prior contacts young people have had with the justice system. It is clear that the severity of sanctions increases as the number of prior contacts increases. For example, four out of five young offenders in the sample who had no prior contacts with police were cautioned for the index offence and only 13 per cent went directly to court. By comparison, only 9 per cent of those with three or more prior contacts were cautioned and 80 per cent went to court.

Table 4. Number of any prior contacts by index contact (n=13,562)

Prior contacts	Index contact					
	Police caution (n=8,422)		YJC (n=945)		Proven court appearance (n=4,195)	
	N	%	N	%	N	%
Number of any prior contacts (caution, YJC or court appearance)						
0 (n=7,787)	6,380	81.9	365	4.7	1,042	13.4
1 (n=2,315)	1,426	61.6	183	7.9	706	30.5
2 (n=1,118)	417	37.3	135	12.1	566	50.6
3+ (n=2,342)	199	8.5	262	11.2	1,881	80.3

Conclusion

Despite great public interest in the operation of YOA, little is known about the number of young people receiving multiple police cautions and YJCs. This study aimed to describe the use of police cautions, youth justice conferences and proven court appearances among a cohort of young people in NSW by examining prior and index contacts with criminal justice system.

Overall, the results were in the expected direction when the hierarchy of sanctions under the YOA are considered. A prior police caution was more likely among those with a more severe index

contact, namely a YJC or a proven court appearance. Conversely, prior YJCs or proven court appearances were less likely among those with the less severe index contact of a police caution.

The findings suggest broad adherence to the legislation. Very few young people in the cohort received more than three police cautions. Similarly, only a very small proportion of young people in the cohort received three or more YJCs; this is consistent with the philosophy of the act that multiple YJCs should not be offered if re-offending persists. No young person was given a YJC for homicide related offences that are excluded under the YOA. Only a comparatively small proportion of juveniles who come into contact with the justice system, however, are dealt with by way of a Youth Justice Conference. Police cautions and court referrals are far more common.

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Notes

1. Warnings were not examined in this study as the data were not deemed to be reliably recorded by NSW Police prior to January 2010.
2. Non-parametric tests were also computed for variables with skewed distributions. The results were consistent with those identified using one-way ANOVAs. As such we have chosen to present means, standard deviations and associated significance tests for each index contact.

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